

CTS
C/M
88

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 28 1998

TIMOTHY R. WALBRIDGE, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

IN RE:

JANICE S. HOLMES,

Debtor.

TRACIE L. TRUE,

Plaintiff,

v.

JANICE S. HOLMES,

Defendant.

Case No. 97-05356-M
Chapter 7

Adversary No. 98-0037-M

JUDGMENT

THIS MATTER came before the Court for trial on August 27, 1998, on the Adversary Complaint filed against Janice S. Holmes, Defendant, by Tracie L. True, Plaintiff. The issues having been duly considered and a decision having been duly rendered, for the reasons set forth in the Memorandum Opinion filed concurrently herewith,

IT IS HEREBY ORDERED that any and all amounts recoverable by Tracie L. True against Janice S. Holmes by virtue of the Judgment entered on January 3, 1995, in Case No. PT-88-035 in the District Court Within and For Tulsa County, State of Oklahoma, a copy of which is attached hereto as Exhibit "A" be, and the same hereby are, not discharged in the bankruptcy case of Janice S. Holmes, Debtor, docketed as Case No. 97-05356-M in the United States Bankruptcy Court for the Northern District of Oklahoma.

IT IS FURTHER ORDERED that any and all amounts recoverable by Tracie L. True against Janice S. Holmes by virtue of the Secured Promissory Note dated August 13, 1993, executed by

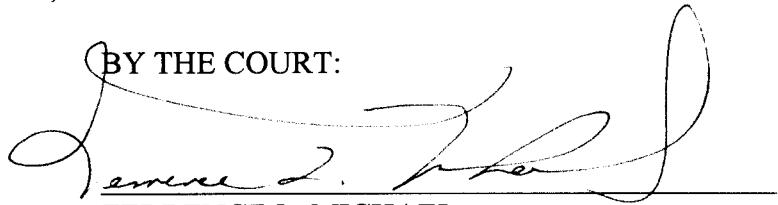
RECORDED 12-31, 1998
Clerk, U.S. Bankruptcy Court
Northern District of Oklahoma

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Janice S. Holmes and Stanley Holmes in favor of Tracie L. True in the original principal amount of Six Thousand One Hundred and no/100ths Dollars (\$6,100.00), a copy of which is attached hereto as Exhibit "B" be, and the same hereby are, not discharged in the bankruptcy case of Janice S. Holmes, Debtor, docketed as Case No. 97-05356-M in the United States Bankruptcy Court for the Northern District of Oklahoma.

Dated this 28th day of September, 1998.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Terrence L. Michael", written over a horizontal line.

TERRENCE L. MICHAEL
UNITED STATES BANKRUPTCY JUDGE

c: Nancy Gourley
David A. Cotter
Katherine Vance

678.1

IN THE DISTRICT COURT WITHIN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

IN THE MATTER OF)
THE DANNY C. TRUE)
LIFE INSURANCE TRUST)

Case No: PT-88-035

TRACIE LYNN TRUE,
an individual,

Plaintiff,

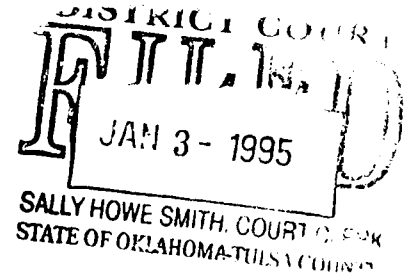
vs.

LIBERTY BANK AND TRUST
COMPANY OF TULSA, N.A.,
a national banking association,
formerly known as First National
Bank and Trust Company of Tulsa,

Defendant.

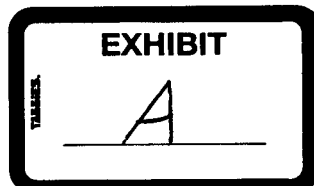
vs.

STANLEY HOLMES AND JANICE
HOLMES,
Third-Party Defendants.



JUDGMENT

THIS MATTER COMES ON FOR HEARING on the 3rd day of January, 1995, on the agreement of the Defendant/Third Party Plaintiff, Liberty Bank and Trust Company of Tulsa, N.A. ("Bank") and Third-Party Defendants Janice Holmes ("Janice") and Stanley Holmes ("Stanley"), for entry of Judgment against Janice and Stanley on the Third-Party Petition of Liberty Bank and Trust Against Stanley and Janice Holmes. John B. Turner appeared on behalf of the Defendant/Third-Party Plaintiff and Michael J. Carson appeared on behalf of the Third-Party Defendants. Janice and



Stanley were represented by counsel and fully advised of their rights and, as evidenced by their signatures hereon, have agreed to entry of Judgment against them on the Third Party-Petition. The Court having reviewed the file and heard statements of counsel, and thus being fully advised in the premises FINDS AND ORDERS AS FOLLOWS:

1. Janice and Stanley are individuals and residents of Tulsa County, Oklahoma.

2. Bank is a national banking association, maintaining offices and doing business in Tulsa, Oklahoma.

3. Tracie Lynn True ("Tracie") is the natural child of Danny Clifford True, now deceased, ("Danny") and Janice, formerly Janice True.

4. Janice is the spouse of Stanley.

5. Danny died on or about April 29, 1988, having declared in his Will and codicils thereto, as well as by endorsement to certain life insurance policies, certain trusts in favor of Tracie. Funds were to be held in trust until Tracie's 21st birthday and used for her education, support and maintenance.

6. At the time of Danny's death, he had sole legal custody of Tracie, by virtue of orders of the Tulsa County District Court in Case No. JFD 75-5013.

7. Following Danny's death, Tracie went to live with Janice and Stanley, but at no time thereafter was either Janice or Stanley appointed the legal guardian or custodian of Tracie's person or property.

8. Max True, Danny's father, originally acted as Trustee of Tracie's share of Danny's estate, including the proceeds of two life insurance policies. Max was replaced as Trustee, and all

matters related to his service as Executor of Danny's estate and Trustee of the Tracie's portion of Danny's estate were resolved, with the appointment of Bank of Oklahoma, N.A. ("BOK") as Trustee on or about December 12, 1988. The appointment of BOK was approved by this Court in the instant case; at the same time, the Court also consolidated the provisions of the two life insurance policies for purposes of administration of the Trust. From that date, the Trust became known as the Danny C. True Life Insurance Trust ("Existing Trust"), with Tracie being its sole and only beneficiary.

9. The Bank became successor trustee of the Existing Trust by order of the Court dated June 13, 1989, and has at all times since then to the present acted as trustee of the Existing Trust.

10. From June 13, 1989 through December 31, 1991, the Bank disbursed to Janice, or to others at her request, the following amounts from the Existing Trust:

1989	\$ 46,751.95	(of which no more than \$6,733.92 was interest)
1990	\$ 42,153.90	(of which \$10,549.97 was interest)
1991	<u>\$ 15,073.09</u>	(of which \$7,320.69 was interest or capital gains)
TOTAL	\$ 103,978.94	

11. Although neither Janice nor Stanley was the court-appointed guardian or custodian of Tracie's person or property, each acted in a fiduciary capacity with regard to her and to her funds, including the funds contained in and disbursed from the Existing Trust. Janice, as the natural guardian of Tracie, and Stanley as her step-father, exercised control over Tracie and her funds. Each of them participated in expending sums for which

reimbursement or disbursement was sought from the Existing Trust and each of them participated in preparing or delivering the requests for reimbursement or disbursement to the Bank.

12. In each instance of disbursement from June 13, 1989 through December 31, 1991, the Bank believed in good faith, based upon the representations of Janice, that it was disbursing funds for Tracie's education, support and maintenance.

13. On May 24, 1994, Tracie filed her Petition for Negligence and Breach of Fiduciary Duty and Removal of Trustee (the "Lawsuit"), in the instant cause, stating her claim that the Bank, in breach of its fiduciary duty to her, had wrongfully disbursed the above-described funds to Janice, resulting in damages to Tracie in the amount of the disbursements, plus interest thereon, plus other out-of-pocket expenses of Tracie to marshall her assets and pursue her claim. Tracie also sought punitive damages.

14. On June 14, 1994, the Bank filed its Answer and Counterclaim/Accounting and Application for Instructions (the "Bank's Answer"), and, on August 18, 1994, with leave of Court, filed its Third-Party Petition against Stanley and Janice Holmes for fraud and misrepresentation in the presentation of requests for disbursements from the Existing Trust, and alleging the possibility that True also made such misrepresentations to the Bank.

15. Prior to obtaining counsel, Janice and Stanley filed letters with the Court, generally denying the claims of the Bank.

16. In addition to the funds distributed to Janice by the Bank from June 13, 1989 to December 31, 1991, as outlined in paragraph 10, above, Janice received disbursements of \$4,400 from BOK in 1988 and \$5,735.78 in 1989. Janice also received, on Tracie's behalf, Social Security Survivor Benefits in the following

amounts: 1988 - \$5775; 1989 - \$8,624; 1990 - \$9,024; and 1991 - \$9,516. In 1988, Janice also received \$5,000 in life insurance proceeds paid directly to her on Tracie's behalf. Beginning at least as early as January, 1989, and continuing through 1991, Janice deposited, or caused to be deposited, all such funds (except certain amounts payable to Swinson Chevrolet in 1989) in a checking account at Arkansas Valley State Bank in Broken Arrow, Oklahoma, that being account number 460824. This account was the only bank account maintained during that period of time by any member of the family and that the funds deposited in the account were used not only for Tracie, but for general family purposes, for the support and maintenance of the family. Likewise, the two vehicles purchased from the Existing Trust were used for general family purposes through 1991.

17. During 1989, Janice had taxable income from employment of \$6,097 and Stanley had no taxable income. During 1990, Janice had some taxable income from employment and Stanley reported no taxable income from employment. During 1991, Janice had some taxable income from employment and Stanley reported no taxable income.

18. Janice and Stanley, after being fully advised by counsel, wish to avoid further cost and inconvenience of litigation by having a judgment entered against them, and in favor of the Bank as trustee of the Existing Trust, as a result of which they will reimburse the Existing Trust a portion of the principal amounts disbursed by the Bank to Janice (and to others at the direction of Janice) in 1989, 1990, and 1991.

19. Janice and Stanley have agreed, as evidenced by their signatures hereon, that the judgment entered against them is not dischargeable in bankruptcy.

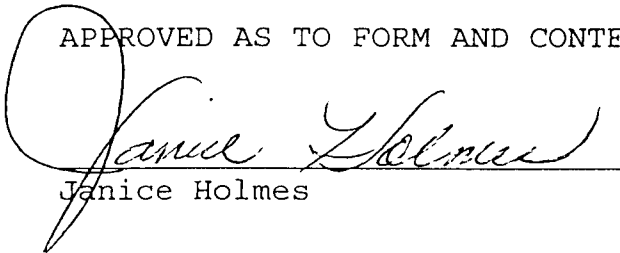
WHEREFORE, judgement is hereby entered in favor of Liberty Bank and Trust Company of Tulsa, N.A., as Trustee of the Danny C. True Life Insurance Trust and against Janice Holmes and Stanley Holmes, jointly and severally, in the amount of Seven Thousand Five Hundred and No/100 Dollars (\$7,500.00).

IT IS SO FOUND AND ORDERED.

David E. Winslow

David E. Winslow
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:


Janice Holmes

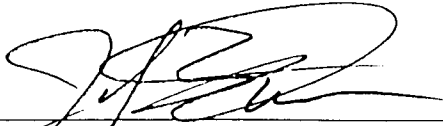

Stanley Holmes

I, _____, County Clerk, Tulsa, and Public Notary, do hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears on file in the Court Clerk's Office of Tulsa County, Oklahoma, this _____ day of _____, 1995.

JAN 5 1995


Cheryl McFarlane
Deputy

APPROVED AS TO FORM:



John B. Turner, OBA # 9132 or

Diana H. Clark, OBA # 15204

Attorney for Defendant, Liberty Bank & Trust

Company of Tulsa, N.A.



Michael J. Carson, OBA # 1518

Attorney for Third-Party Defendants,

Stanley Holmes and Janice Holmes

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SECURED PROMISSORY NOTE

\$ 6,100.00

BROKEN ARROW, OKLAHOMA
August 13, 1993

This Secured Promissory Note is made this 13th day of August, 1993 by Janice S. Holmes and Stanley Holmes, herein referred to as the Debtors, and is payable to Tracie L. True herein referred to as Payee.

For value received, Debtors promise to pay to the order of Payee the amount of Six Thousand One Hundred and No/100 Dollars (\$6,100.00) in thirty-four (34) consecutive equal monthly installments of Two Hundred Dollars (\$200) and one final installment of Two Hundred Forty-Two and 80/100 Dollars (\$242.80) (each of which includes interest at a rate of Ten Percent (10%) per annum from the date hereof), starting on the fifteenth day of September, 1993, and continuing on the fifteenth day of each month thereafter through and including July 15, 1996. Any payment of interest not made when due becomes principal hereunder and accrues interest.

In the event of a failure to make the payment of any installment, or any part of an installment, when due, Payee, at her option may declare a default and the entire unpaid balance will then be due and payable. Debtors shall be liable for the cost of collection on this Secured Promissory Note after default, including a reasonable attorney fee. Debtors hereby severally waive presentment for payment, notice of nonpayment, demand of payment, protest and notice of protest, notice of dishonor and diligence in the collection of this Secured Promissory Note and consent that the time of payment may be extended by Payee without notice or previous consent and without waiver of any rights hereunder.

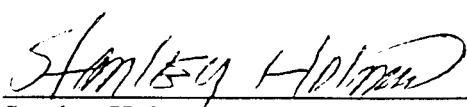
Debtor shall have the right to pre-pay this Secured Promissory Note in full or in part at any time without penalty. Any prepayment shall be applied first to accrued interest and then to principal.

This Secured Promissory Note is secured by a Second Mortgage Lien of even date herewith on that certain real estate situated in Tulsa County, State of Oklahoma and described as follows:

Lot Nine (9), Block One (1), TURTLE CREEK, an Addition to the city of Broken Arrow, Tulsa County, State of Oklahoma.
Also known as 2309 W. Indianola.

This Secured Promissory Note shall be construed and interpreted in accordance with the laws of the State of Oklahoma.


Janice S. Holmes


Stanley Holmes

